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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 641

TOM C. CLARK, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN,

Petitioner,

against

STANDARD OIL COMPANY (NEW JERSEY), STANDARD OIL DEVELOPMENT COMPANY, STANDARD CATALYTIC COMPANY, AND JASCO, INCORPORATED,

Respondents

ON CROSS-PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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The "conditional cross-petition" of the Attorney General, as successor to the Alien Property Custodian, seeks certiorari to review five questions in the event that the petition of the respondents, filed February 6, 1948 (No. 576, this Term), should be granted. With the exception of No. 5, the Questions proposed by the cross-petition are similar to and in some respects identical with the Questions proposed by us in No. 576. If, therefore, review be granted on our petition, we do not oppose the cross-petition except

for question No. 5, which seeks review of a finding purely of fact approved by both courts below.

Opinions Below, Jurisdiction, Statute Involved and Statement

These matters appear in our original petition and brief filed in No. 576, this Term.

ARGUMENT

Question No. 5 sought to be presented by the cross-petitioner is not a question of law or a question of general importance and is not suitable for review by certiorari. That Question deals with the conclusion of the courts below that the sale by I. G. to the respondent Standard Oil Company of 200 shares of S. I. G. stock was a genuine transaction. The statement of the cross-petitioner that the trial court's finding on this point was "not disturbed by the Circuit Court of Appeals" is an understatement. The Circuit Court considered the record upon the appeal of the Government in this regard. After reciting the facts it said (IV 1708-9):

> "The price paid for the stock by Standard therefore does not seem unfair. Since the court found the transaction to be one designed in good faith to pass title to Standard, the stock belonged to Standard when vested and Standard is entitled to recover it."

We do not believe a finding of this character merits review by certiorari under any interpretation of Rule 38 of this Court.

With respect to the other questions sought to be presented by the cross-petitioner, our failure to oppose review is not, of course, an acquiescence in the arguments which the cross-petitioner seeks to make upon the merits. For example, the citation by the Attorney General as cross-

petitioner of old prize law (pet. p. 10) in support of his desire to retain the vested property regardless of its ownership, is in effect a claim to letters of marque and reprisal, to privateer against all and sundry in total disregard of the original and proper purpose of the Trading with the Enemy Act. The distinction is noted in the very citation relied upon by the cross-petitioner, viz. *Stoehr* v. *Wallace,* 269 Fed. 827, 840, affd. 255 U. S. 239.

CONCLUSION

The conditional cross-petition should be denied with respect to the findings below on the S. I. G. stock, and, if otherwise granted, should be granted only together with the petition in No. 576.

Respectfully submitted,

JOHN W. DAVIS,
THEODORE S. KENYON,
Counsel for Respondents.

New York, N. Y.
March 23, 1948.